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11 *Future Motion, Inc.*

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 FUTURE MOTION, INC.,

Case No.: 2:16-cv-0013-MMD-CWH

15 Plaintiff,

16 v.

17
18 CHANGZHOU FIRST INTERNATIONAL
TRADE CO., LTD.,

19 Defendant.
20

**CERTIFICATION OF W. WEST ALLEN,
ESQ. IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION FOR AN EX
PARTE TEMPORARY RESTRAINING
ORDER, SEIZURE ORDER AND
PRELIMINARY INJUNCTION**

21
22 Pursuant to the Federal Rules of Civil Procedure, Rule 65, the Patent Act, 35 U.S.C. § 283,
23 and Local Rule 7-5, Plaintiff Future Motion, Inc. ("Future Motion") has moved *ex parte* for a
24 Temporary Restraining Order, a Seizure Order and a Preliminary Injunction to be issued against
25 Defendant Changzhou First International Trade Co., Ltd. ("Changzhou").

26 Pursuant to Fed. R. Civ. P. 65 and L.R. 7-5, Future Motion, by and through its
27 undersigned attorney of record, W. West Allen, Esq. and the law firm of Lewis Roca Rothgerber
28 LLP, and Shawn J. Kolitch (pro hac vice application pending and the law firm of Kolisch

1 Hartwell, P.C., hereby submits the following Certification of W. West Allen, Esq. (the
2 “Certification”) in support of Future Motion’s Emergency *Ex Parte* Motion for a Temporary
3 Restraining Order, Seizure Order and Motion for Order to Show Cause and Preliminary
4 Injunction (the “Motion”).

5
6 Pursuant to Fed. R. Civ. P. 65(b)(1), Future Motion has set forth in both the Declaration
7 of Kyle J. Doerksen and the Declaration of Shawn J. Kolitch, attached to the Motion as Exhibits
8 A and B, and incorporated herein by reference, facts indicating the immediate and irreparable
9 injury, loss, damage, and harm that will result to Future Motion in the absence of an *ex parte*
10 temporary restraining order and a seizure order in this action.

11 Pursuant to Fed. R. Civ. P. 65(b)(1)(B) and LR 7-5, I certify that Future Motion seeks an
12 *ex parte* temporary restraining order, on an emergency basis, so that Defendant Changzhou cannot
13 create a substantial impediment to Future Motion’s ability to enforce its intellectual property rights
14 identified in the Complaint, by continuing to offer infringing products for sale, in violation of
15 Future Motion’s patent rights, at the 2016 International CES trade show that will be held in Las
16 Vegas, Nevada From January 6-9, 2016.

17
18 As described in the accompanying Declaration of Shawn J. Kolitch, in a letter dated
19 December 28, 2015, Future Motion attempted to give notice to Changzhou of its infringement and
20 the likelihood of Future Motion’s court action, including the likelihood that Future Motion would
21 seek a temporary restraining order unless Changzhou voluntarily withdrew its “Surfing Electric
22 Scooter” product from the CES show and the U.S. market. This notice was sent to Changzhou at
23 the email address and the postal address provided by Changzhou on its website. Changzhou has
24 not responded.

25
26 Defendant is currently exhibiting and offering for sale its infringing products at the CES
27 show, thereby infringing Future Motion's patent rights in a highly public industry forum. Further
28 notice to Changzhou should not be required, because this would delay any injunctive relief beyond

1 the dates of the CES show, at which point Future Motion will have been irreparably harmed
2 through unfair competition from the infringing Changzhou products, resulting in unquantifiable
3 loss of market share, as well as irreparable damage to Future Motion's reputation and goodwill
4 among consumers and the media. Furthermore, Changzhou has no known corporate presence in
5 the U.S., so as a practical matter, any relief provided after the CES show will likely not be felt by
6 Changzhou or affect its operations. Future Motion is requesting a preliminary injunction hearing
7 at the Court's earliest convenience, so that the *ex parte* temporary restraining order will have a
8 limited and finite effect on Defendant prior to an opportunity to be heard on the merits.

10 If Defendant is not restrained as requested in Future Motion's request for *ex parte* relief,
11 Future Motion would be deprived of its intellectual property, and its ability to enforce its
12 intellectual property rights against Defendant. That is, for the duration of the CES trade show
13 Defendant will be permitted to engage in the very infringing activity of which Future Motion
14 complains and for which Future Motion seeks relief, such that Future Motion's immediate
15 enforcement of its intellectual property rights will be substantially curbed and Future Motion will
16 be significantly damaged. Accordingly, this Court should enter an *ex parte* temporary restraining
17 order and seizure order in accordance with the [Proposed] Temporary Restraining Order and
18 Seizure Order attached to the Motion as Exhibit D, to provide Future Motion immediate and
19 limited protection until such time as this Court sets a contested hearing on Future Motion's request
20 for preliminary injunctive relief. In so doing, this Court will preserve the *status quo ante* and
21 recognize Future Motion's rights.

24 If the Court delays injunctive relief by providing formal notice to Defendant and an
25 opportunity to be heard in advance of any relief, there is a high risk that Defendant will leave the
26 United States and fail to appear in this action, after causing unquantifiable irreparable harm to
27 Future Motion through its actions at the CES show. Further, if Defendant is given advance notice
28 of a TRO or seizure order, there is a likelihood that Defendant will temporarily conceal its

1 infringing activities at CES, only to resume those activities when the immediate threat has passed.
2 Accordingly, Future Motion believes that providing such notice to Defendant would largely defeat
3 the purpose of seeking relief. Therefore, I believe that good cause exists for submitting the motion
4 without formal notice to Defendant, and that this Court should not require Future Motion to
5 provide formal notice to Defendant prior to a hearing on Future Motion's request for entry of an *ex*
6 *parte* temporary restraining order.
7

8 Future Motion may be contacted through the addresses and telephone numbers of its
9 counsel as set forth below. To the best of Future Motion's knowledge, Changzhou's office and
10 postal address is as follows:

11 Changzhou First International Trade Co., Ltd.
12 Longyu Western Road No. 28
13 Wujin, Changzhou
14 China
15 Phone: 86-0519-81291669
16 Email: leo@changzhou-first.com

17 Because Future Motion requests the entry of a temporary restraining order on an *ex*
18 *parte* basis, pursuant to LR 7-5(d)(3) Future Motion has not made personal consultation with a
19 representative or counsel for Defendant to resolve the issuance of an *ex parte* temporary
20 restraining order without Court action because, as Future Motion sets forth herein and in its
21 moving papers, the nature of the instant emergency and Changzhou's lack of response to
22 Future Motion's demand letter precludes such consultation.

23 Dated this 6th day of January, 2016.

24
25 
26 W. West Allen
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